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ARIZONA ATTORNEY GENERAL

September 1, 1961
Opinion No. 61-62

REQUESTED BY: Arizona State Board of Directors
for Junior Colleges, and
Yuma County Attorney

OPINION BY: ROBERT W. PICKRELL
The Attorney General

- QUESTIONS:
1. Can the Board of Supervisors call a special election to determine the formation of a junior college district, as provided by §15-668, Arizona Revised Statutes, on the same day of the annual election of members of the board of trustees of a school district, which is held on the first Tuesday in October as provided by A.R.S. §15-471?
 2. If the election pursuant to §15-668, Arizona Revised Statutes, is held on the first Tuesday in October, may the Board of Supervisors use the same election boards for conducting both elections?
 3. If the two elections described above are held on the first Tuesday in October, may the Board of Supervisors use the same precincts to conduct the special election that are used for the election of school district trustees?
 4. If a special election is held pursuant to §15-668, A.R.S., is absentee voting permitted?

- CONCLUSIONS:
1. Yes.
 2. No.
 3. No.
 4. No.

The above mentioned questions were submitted to this office by both the Arizona State Board of Directors for Junior Colleges and the Yuma County Attorney and this opinion will constitute an answer to their requests.

In answering the questions it may be stated that the method of conducting the election of school district trustees is contained in Title 15, Chapter 4, Article 3, Arizona Revised Statutes, designated "Election of Trustees," and that the procedure governing the special election as prescribed by §15-668, Arizona Revised Statutes, is contained in Title 16, Elections and Electors, with emphasis on Chapter 7, et seq.

Section 15-668, Arizona Revised Statutes, reads in part:

"***The superintendent shall transmit notification of approval for formation of the proposed district to the board of supervisors who shall submit the question to the qualified electors of the county at the next general election or at a special election called for that purpose. If a special election is called, notice thereof shall be given by publication for at least two weeks in a newspaper of general circulation published in the county or counties of the proposed district. The election shall be conducted and returns made in the manner provided by law for special elections."

(Emphasis supplied).

Subsection A of §15-471, Arizona Revised Statutes, provides for the annual election of school district trustees, and states as follows:

"§15-471. Election of trustees; terms; voting precincts

A. An election shall be held in each school district on the first Tuesday in October each year."

No. 1

An analysis of §15-668, Arizona Revised Statutes, does not require the special election to be held at any particular time. The only limitation is that the special election must be called for the particular purpose of voting on the question of the formation of a junior college district. Therefore, we conclude that the Board of Supervisors could call a special election to be held for this purpose on the same day that the election of the trustees of a school district is held.

No. 2

In the case of election of school district trustees the election officers are appointed by the Board of Trustees. The

pertinent statute is recited in full:

"§15-476. Election officers; compensation

The Board of Trustees shall appoint an inspector, two judges and two clerks as election officers. If no officers are so appointed, or if those appointed are not present at the opening of the polls, the electors present may select them. In all school district elections each election officer may be paid from funds of the school district at the rate paid a similar election official at the last state general election."

Article 5 of Chapter 7, Title 16, Arizona Revised Statutes, Sections 16-771 to 16-776, inclusive, provides for the appointment of election boards by the Board of Supervisors in a general and primary election and a special election. It is our opinion that the appointment of the election board for the special election as provided for in §15-668, Arizona Revised Statutes, is governed by §16-771, Arizona Revised Statutes, et seq. Therefore, if the election is held on the first Tuesday in October, the Board of Supervisors may not use the election board as provided for in the election of school trustees, as stated in §15-476, Article 3 of Title 15, Chapter 4, Arizona Revised Statutes, but must follow the election board requirements as contained in A.R.S. §16-771, et seq.

No. 3

Subsection D of §15-471, Arizona Revised Statutes, is recited below:

"§15-471. Election of trustees; terms; voting precincts

D. For the purpose of any election of trustees, the Board of Trustees may divide the school district into voting precincts and shall designate the polling place. The district schoolhouse, if there is one, shall be designated as a polling place."

Section 16-761, Arizona Revised Statutes, is quoted as follows:

"§16-761. Designation of election precincts and
voting places

A. The Board of supervisors of each county shall, on or before December 1 of each year preceding the year of a general election, by an order, establish a convenient number of election precincts in the county, and define the boundaries thereof.

B. Not less than twenty days before a general or primary election, and at least ten days before a special election, the Board shall designate the place within each precinct where the election shall be held. If the Board fails to designate the place for holding the election, or if it cannot be held at or about the place designated, the justice of the peace in the precinct shall, two days before election, by an order, copies of which he shall immediately post in three public places in the precinct, designate the place for holding the election. If there is no justice of the peace in the precinct, or if he fails to do so, the election board of the precinct shall designate and give notice of the place of holding the election."

A reading of the above two pertinent statutes discloses that in the annual school district trustee election the power to establish the precinct rests with the Board of Trustees itself, whereas the designation of the election precincts in the county lies within the duties of the County Board of Supervisors. The election precincts established pursuant to §16-761, Arizona Revised Statutes, cover the entire area of the county, whereas the school district precincts as provided for in Subsection D of §15-471, Arizona Revised Statutes, encompass the territorial limits of the school district.

It is our conclusion that the Board of Supervisors necessarily must utilize the entire precincts throughout the county for voting as established pursuant to §16-761, Arizona Revised Statutes, which would not necessarily coincide with the precincts within the particular school districts of the county.

No. 4

This office in Opinion No. 61-8 held that absentee voting was not permissible in the special Congressional election called for March 7 and May 2, 1961. That opinion held that in special elections absentee voting was limited to those special elections called pursuant to Article 21, Section 1 of the Arizona Constitution. By the enactment of Section 16-1101.01, Arizona Revised

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Statutes, by the Twenty-Fifth Legislature, absentee voting is now authorized at special primary and special general elections. This office, in arriving at the decision as to the above mentioned Congressional election, applied the principle of statutory construction, "expressio unius est exclusio alterius," which implied an exclusion of any special election other than the one contained in Article 21, Section 1 of the Arizona Constitution. By the same token, the special election as provided by §15-668, Arizona Revised Statutes, is excluded. Therefore, it is our opinion that absentee voting in this type of special election is not permitted.

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